

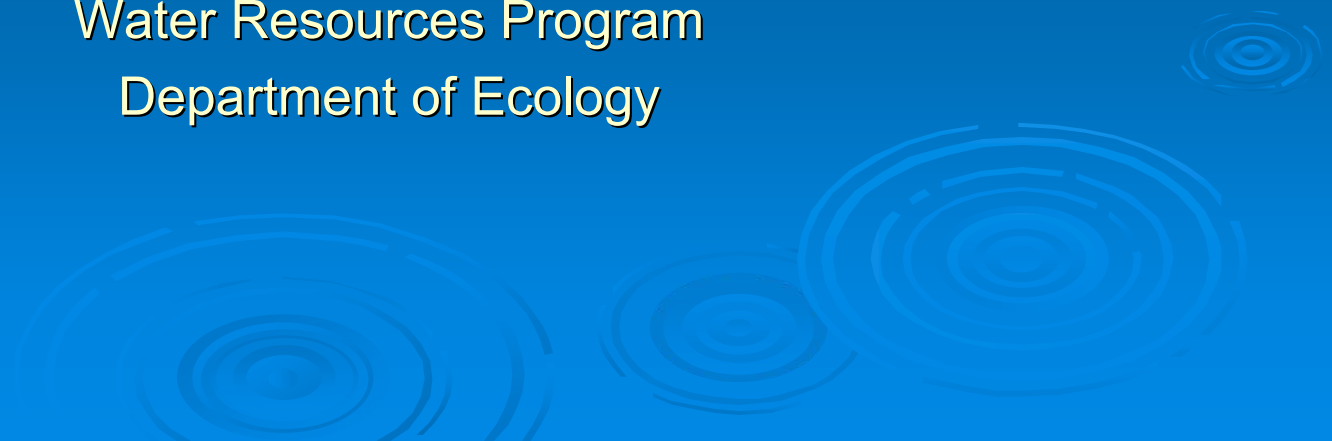
Municipal Water Law

Ecology Interpretive and Policy Statement

July 17, 2006

WRAC Meeting

Water Resources Program
Department of Ecology



Who Has Worked on the IPS and Other Muni Issues?

- 💧 Brian Walsh (HQ)
- 💧 Doug Rushton (HQ)
- 💧 Alan Reichman (AG)
- 💧 Jeff Marti & Jill Walsh (SWRO)
- 💧 Paul Fabiniak (NWRO)
- 💧 Victoria Leuba (ERO)
- 💧 Dan Haller (CRO)



What have we
done?



Where Are We Going?



What's
Taking
So
Long?



What Have We Done and Where are we Going?

💧 Draft Work Products

- 💧 Place of Use

- 💧 Section 5(2) document

- 💧 Water System Planning

- 💧 Watershed Planning

- 💧 *Draft* Interpretive & Policy Statement

- 💧 MOU with Health

- 💧 Training

- 💧 Internet Website

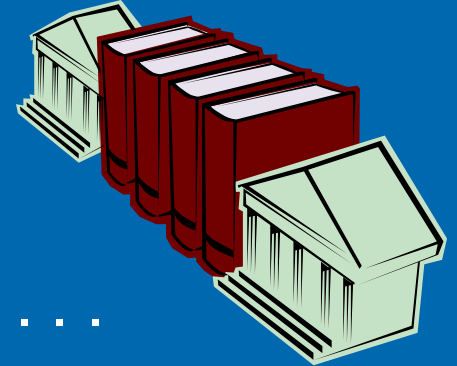
- 💧 Case Studies

**Work products
in yellow
are completed**

What's Taking So Long?

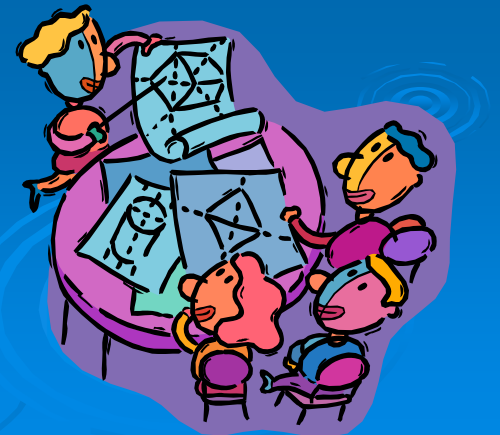
💧 Scope of the Legislation

- 💧 Dealing with unintended consequences . . .
- 💧 What did the legislature mean ? ? ?

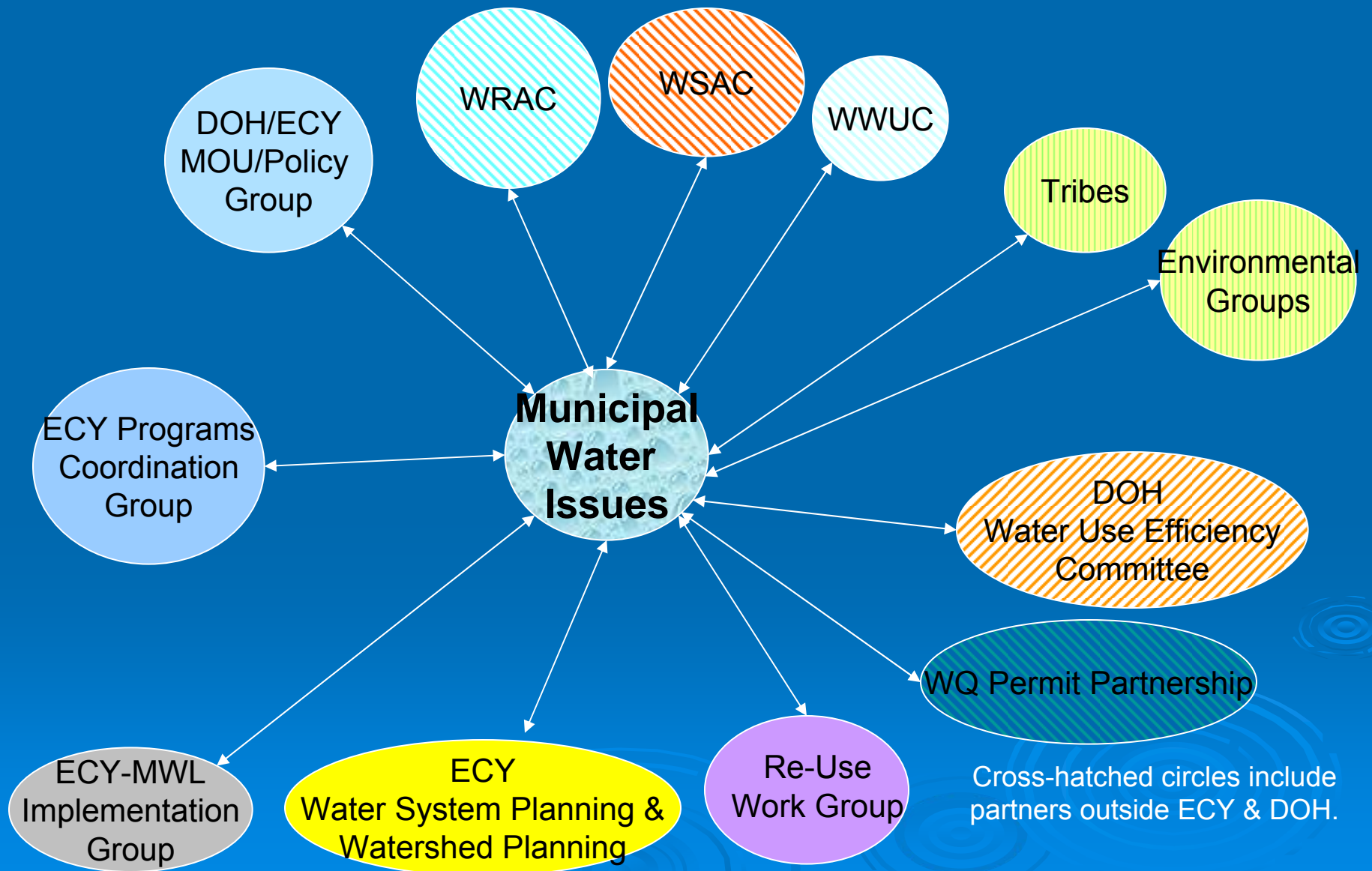


💧 Meetings, meetings, meetings . . .

- 💧 MWLIG (internal)
- 💧 DOH (partner agency)
- 💧 WWUC, WRAC, Tribes + (external)



Coordination Efforts



Brief Overview of IPS Content



💧 Added/Amended Portions of code :

RCW 90.03.015

RCW 90.03.260

RCW 90.03.330

RCW 90.03.386

RCW 90.03.550

RCW 90.03.560

RCW 90.03.570

RCW 90.03.580

RCW 90.03.590

RCW 90.54.191

RCW 90.82.048

Included in IPS

Not included in IPS

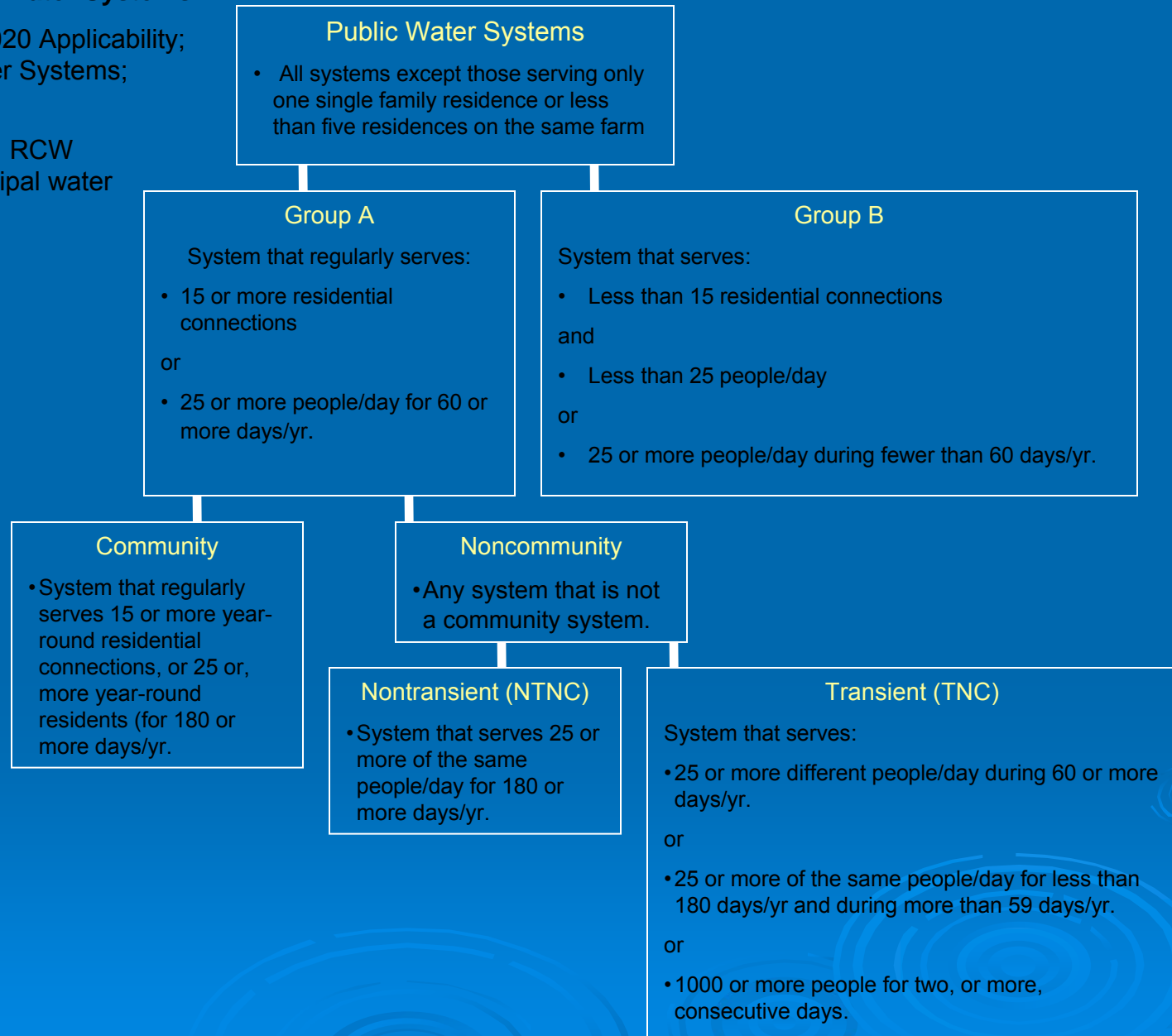
What is a Municipal Water Supply?

- 💧 RCW 90.03.015(4) says (paraphrased):
 - 💧 Providing water for ≥ 15 residential connections
 - 💧 Providing residential use of water for nonresidential population ≥ 25 people for at least 60 days/yr
 - 💧 Governmental purposes by a city, town, PUD, county, sewer/water district

Definitions of Public Water Systems

From: WAC 246-290-020 Applicability;
Group A Public Water Systems;
Table 1, page 27.

See also: Water Code, RCW
90.03.015(4), "Municipal water
supply purposes".



What Does DOH Say About 015(a)?

💧 RCW 90.03.015(a):

- 💧 Providing water for 15 or more residential connections

💧 Group A Community Systems

- 💧 (In!) 15 or more residential connections
- 💧 (Out!) 25 or more residents for > 180 days (e.g. prisons, nursing homes).

What Does DOH Say About 015(a)?

- 💧 RCW 90.03.015(a):
 - 💧 Providing residential use of water for nonresidential population that is on average ≥ 25 people for at least 60 days/yr
- 💧 Group A Non-Community Systems
 - 💧 Full-range of residential water uses!
 - 💧 Temporary domiciles serving non-residents
 - 💧 (Generally In!) Vacation homes, temporary farm worker housing...
 - 💧 (Generally Out!) Schools, daycares, campgrounds, restaurants, factories . . .

Who's In? Who's Out? 015(b)

- 💧 Governmental or governmental proprietary?
- 💧 Government Entities in this subsection constitute an exclusive list.
- 💧 (In!) Domestic, commercial, industrial, fire flow, city services, irrigation of parks and open space...
- 💧 (Out!) Agricultural Irrigation, others?

What Does This Mean?

- 💧 RCW 90.03.015: If water is beneficially used under a water right for the purposes listed in (a), (b), or (c) of this subsection, any other beneficial use of water under the right generally associated with the use of water within a municipality is also for “municipal water supply purposes”.
- 💧 Only affects dual purpose water rights
- 💧 We can conform “typical” muni uses under a single water right—no portfolio!

What Does This Mean II?

- 💧 RCW 90.03.015: If a governmental entity holds a water right that is for the purposes listed in (a), (b), or (c) of this subsection, its use of water or its delivery of water for any other beneficial use generally associated with the use of water within a municipality is also for “municipal water supply purposes”.
- 💧 Suggests portfolio approach for governmental entities?
- 💧 However, RCW 90.03.560 does not authorize any other water right or a portion thereof held or acquired by a municipality to be identified as a municipal water supply right unless it is changed or transferred to such purpose.
- 💧 Answer: We can conform “typical” muni uses under a single water right—no portfolio!

What Does This Mean III?

- 💧 RCW 90.03.015: “Municipal water supply purposes” means a beneficial use of water for (a), (b), or (c).
- 💧 RCW 90.03.260: If it is a municipal water supplier, service connection figure not a limitation on the right.
- 💧 Beneficial use includes unauthorized connections within the authorized Qi and Qa.

System	Permitted Connections	Actual Connections	Muni?
A	50	$15 \leq X < 50$	Yes
B	50	< 15	No
C	10	≥ 15	Yes
D	10	< 15	No

What About Inchoate Water?

System	Permitted Connections	Actual Connections	Muni?	Inchoate Water
A	50	$15 \leq X < 50$	Yes	Good Standing
B	50	< 15	No	Community Domestic / Muni
C	10	≥ 15	Yes	Good Standing
D	10	< 15	No	Reasonable Use

💧 Does Intent of the Permit Matter Anymore?

- 💧 Yes. If not a muni and actual use $<$ permitted.
- 💧 Yes. Inchoate water must be used for original project—Town of Carrot's inchoate water not for Town of Turnip (e.g. Weaver case)

A Muni Submits a Change. What's Different Now?

- 💧 Purpose of Use
 - 💧 Conformance vs. change in purpose
- 💧 Place of Use
 - 💧 Status of water system planning
- 💧 Point of Diversion/Withdrawal
 - 💧 Nothing new—either change or showing of compliance

Purpose of Use

- 💧 For what purpose was the right issued?
- 💧 What are the actual beneficial uses?
- 💧 If an actual beneficial use qualifies under RCW 90.03.015 (a), (b) or (c), then it is conformable.
- 💧 If one purpose qualifies as a muni, and another is typically associated with a muni, all are conformable.
- 💧 If any purpose cannot be conformed, it must be changed under RCW 90.03.380.

Place of Use

- 💧 RCW 90.03.380/90.44.100 change still possible
 - 💧 Such a change is static, not growing communities doctrine
 - 💧 Level of info required similar to WSP (e.g. map, planning projections for service area, authority to serve)
- 💧 RCW 90.03.386 Place of Use change occurs by operation of law IF:
 - 💧 DOH approved plan or engineering document
 - 💧 System is in compliance with plan elements
 - 💧 System is “not inconsistent” with land use plans, development regulations, comprehensive plans, watershed plans

What About Extent and Validity?

- 💧 A tentative determination of the extent and validity of a water right is required for every change. Why?
 - 💧 Supreme Court decisions (Twisp, Theodoratus, Sullivan Creek, etc.)
 - 💧 Perfected rights can be changed in ways unperfected rights cannot.
- 💧 Ecology must still document in an ROE whether inchoate water exists for a municipal supply water right and that it is “in good standing” (RCW 90.03.330) and may be developed consistent with the intent of the permit.

What's on the Horizon?

- 💧 Finalize Draft Interpretive Policy Statement
 - Comments July 17-31, finalize in September
- 💧 Focus sheets
- 💧 Update of Memorandum of Agreement with DOH to fulfill requirements in RCW 90.03.386:
 - Who does what, when, why and how?
- 💧 Conservation rulemaking
- 💧 External stakeholder coordination and training

Web Information

DOH Office of Drinking Water

<http://www.doh.wa.gov/ehp/dw/default.htm>

Ecology Water Resources Program

http://www.ecy.wa.gov/programs/wr/rights/muni_wtr.html

